

CARROLL RAY FENDER,

Plaintiff

VS.

Lieutenant LARRY BYRD and
COLQUITT CO. SHERIFF'S OFFICE/
JAIL,

Defendants

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: NO. 7:10-cv-100 (HL)

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: ORDER

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Under the plain language of section 1997e(a), a prisoner must exhaust before he files a section 1983 lawsuit in this Court. It is irrelevant that plaintiff has now exhausted his available remedies. *See Perez v. Wisconsin Dept. of Corrections*, 182 F.3d 532, 535 (7th Cir. 1999) (district courts may not waive exhaustion requirement, even if a prisoner exhausts his remedies shortly after filing his lawsuit).

Because it is clear from the face of the complaint that plaintiff did not exhaust his administrative remedies prior to initiating this lawsuit, he fails to state a claim upon which relief can be granted. Based on the foregoing, plaintiff's complaint is hereby **DISMISSED WITHOUT PREJUDICE**, pursuant to section 1997e, for failure to exhaust administrative remedies.¹ Plaintiff may file another complaint now that he has exhausted administrative remedies.

SO ORDERED, this 21st day of October, 2010.

s/ Hugh Lawson
HUGH LAWSON
UNITED STATES DISTRICT JUDGE

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¹ In *Jones v Bock*, 127 S. Ct. 910, 921 (2007), the Supreme Court held that under the PLRA, exhaustion of administrative remedies is an affirmative defense to be raised by the defendants. If the complaint, on its face, however, indicates that a prisoner's claims are barred by an affirmative defense, the complaint may be dismissed for failure to state a claim upon which relief can be granted. *Clark v. Georgia Bd. of Pardons and Paroles*, 915 F.2d 636, 640-41 (11th Cir. 1990); *see also Anderson v. Donald*, 2008 WL 73672 (11th Cir. Jan. 8) (affirming district court's *sua sponte* dismissal of prisoner's section 1983 complaint for failure to comply with the PLRA's mandatory exhaustion requirement), *cert. denied*, 2008 WL 552935 (Mar. 3, 2008).